No. 87- 1519

IN THE

Supreme Court Of The United States

October Term, 1987

THE BOARD OF OPERATIVES OF THE AMERICAN CAST IRON PIPE COMPANY AND THE JOHN J. EAGAN TRUST, et al.,
Petitioners

vs.

THE BOARD OF MANAGEMENT OF THE AMERICAN CAST IRON PIPE COMPANY AND THE JOHN J. EAGAN TRUST, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

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SUPREME COURT, U.S.
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JOSEPH F. SPANIOL, JR.
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QUESTIONS PRESENTED

1. Did the Supreme Court of Alabama correctly affirm the denial of Petitioners' motion under Rule 60 (b) of the Alabama Rules of Civil Procedure to set aside a 44 year old judgment in a case involving Alabama trust law?

2. Did the Supreme Court of Alabama correctly affirm the denial of Petitioners' motion under Rule 60 (b) of the Alabama Rules of Civil Procedure to set aside a 44 year old judgment which approved rules and regulations containing some racially discriminatory provisions, when the provisions and the effects thereof were eliminated by a decision of a federal court in 1970?

LIST OF PARTIES AND RULE 28.1 LIST

The parties in the court below were Robert Bates, Gary L. Bradford, Robert M. Myers, James C. Frederick, William H. Hill, Nick Johnson, David J. Keeton, James Sloan, and Tommy Albright, nine of the twelve members of the Board of Operatives of American Cast Iron Pipe Company; and Paul W. Green, Richard W. Bragdon, Joe P. Doughty, and Eugene E. Langner, as members of the Board of Management of American Cast Iron Pipe Company. The Board of Operatives and the Board of Management constitute the Board of Trustees under the codicil to the will of John J. Eagan, deceased.

American Cast Iron Pipe Company is a corporation organized under the laws of the State of Georgia with its principal place of business in Birmingham, Alabama. All of its stock is held in trust by the Board of Operatives and the Board of Management of American Cast Iron Pipe Company. American Cast Iron Pipe Company is not a subsidiary of any other company and all of its subsidiaries are wholly owned.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the Supreme Court of Alabama's decision in this case. The decision by the court below is reported as *Adams v. Green* at 516 So.2d 551 (Ala. 1987). (App. F, F-55).

STATEMENT OF THE CASE

Petitioners have failed to correctly and fairly present the statement of the case and it is so replete with argument that

Respondents are compelled to present their own statement of the case in order for the Court to fully understand the questions presented for review.

The event precipitating this petition was the filing by Petitioners of a motion under Rule 60(b) of the Alabama Rules of Civil Procedure to set aside a forty-four (44) year old judgment involving Alabama trust law. This case, which was initially styled *Moore v. Hardin,* Case No. 53715 in the Circuit Court of the Tenth Judicial Circuit of Alabama, originated in 1942. The Petitioners' predecessors in office, the Board of Operatives of American Cast Iron Pipe Company (hereinafter "ACIPCO") and the Respondents' predecessors in office, the Board of Management of ACIPCO, as trustees, holding all of the common stock of ACIPCO, jointly filed the bill of complaint in this case. (App. A, A1-11). Twelve (12) ACIPCO employees working in various departments of the plant in Birmingham, Alabama, were named as respondents in the complaint. They were representative of all employees of ACIPCO (App. A, A2-3 and App. B, B2-3) and were represented by separate counsel. (App. B, B-2).

The complainants sought instructions from the court and a declaration of their rights as trustees. The complaint alleged that the Board of Operatives and Board of Management of ACIPCO together constituted the trustees under the codicil to the will of John J. Eagan, who died on March 30, 1924. A copy of Mr. Eagan's will and codicil, as construed by a jury verdict and the decree of the court in 1924 in *Eagan v. Moore* in the Superior Court of Fulton County, Georgia, Case No. 61106 (App. I, I30-33), was attached to the complaint as Exhibit A. Mr. Eagan's codicil bequeathed all of the common stock of ACIPCO to the Board of Management and the Board of Operatives, as trustees. The codicil provided that in voting the stock the members of the Board of Management, as trustees shall vote as a unit, and the members of the Board of Operatives as trustees, shall vote as a unit, the vote of each group to be determined by the majority vote of the members of the respective boards. (App. I, I-12). In *Eagan v. Moore, supra,* by

jury verdict and decree of the court (App. I, 130-33), it was decided, among other things, that the proper construction of the codicil was that in the event of a tie in voting the stock, the question in dispute should be referred to the Board of Directors of the company for resolution. This provision for breaking tie votes was incorporated in rules and regulations governing the trustees approved by the 1942 decree in this case. In reality, it is this provision of the codicil which the Petitioners are complaining about in this case and not racial restrictions originally contained in other provisions of the rules and regulations but long since eliminated.

The complaint in *Moore v. Hardin* further alleged that prior to his death, Mr. Eagan had created the Board of Management and the Board of Operatives under a plan which he had announced in a speech to the employees at the Christmas Season of 1921. (App. A, A-18). A copy of an account of that speech, which was a part of the permanent records of the company, a written outline of the plan which was submitted to the employees for their approval, and a copy of a letter from Mr. Eagan to the two boards were attached as Exhibits B, C and D to the complaint. (App. A, A18-27).

The plan provided that the members of the Board of Management consisting of the President, Vice President, Works Manager, Sales Manager and Treasurer and two members from the Board of Operatives were to be elected to the Board of Directors. Additionally, there were to be elected to the Board of Directors one member from the clerical forces of the company, one member from the employees of the company at large, and three members not connected with the company, one to represent the buying public, one to represent invested capital, and one to represent the religious, social and educational life of the country. (App. A, A-7, 48-49).

The complaint also alleged that the number of trustees was comparatively large and changed from time to time, particularly members of the Board of Operatives, and the trustees needed rules and regulations for guidance in performing their

duties as trustees. The complainants, predecessors of Petitioners and Respondents herein, had adopted rules and regulations at the February, 1942 Board of Trustees meeting which they asked the court to approve. The complainants asked the court to determine:

> 1. Whether or not your complainants as such trustees in the proper management and conduct of said trust have the right and authority to adopt reasonable rules and regulations which will govern the conduct of said trust and the actions of your complainants and their successors as trustees in the management and conduct of such trust.
>
> 2. Whether or not in the opinion of this Court the rules and regulations submitted herewith, marked Exhibit G, are reasonable and proper rules and regulations to be adopted by the trustees, and, if so, that this Court will duly approve same.

(App. A, A-9).

In a document clearly styled "In the Circuit Court of the Tenth Judicial Circuit of Alabama, In Equity" and giving the full style of the case, all of the respondents jointly executed an Acceptance of Service. (App. B, B-2). They joined with complainants in asking for instructions and directions and put in issue the question of whether or not the trustees had the right to adopt such rules and regulations. (App. B, B-2).

As was customary and appropriate under the Alabama rules of procedure and practice at that time, the cause was submitted on the bill of complaint and exhibits, the answer, and the testimony of witnesses whose testimony (both direct and cross examination) had been taken down by a commissioner and submitted in writing. In its decree dated April 6, 1942, the court found that the complainants therein were the duly constituted members of the Board of Management and the Board of Operatives of ACIPCO and as such were the trustees of the trust created by the codicil to Mr. Eagan's will; that the corpus of the trust was the common stock of ACIPCO; and that the beneficiaries of the trust were the employees of ACIPCO. (App. B, B1-9).

The court also found that it was impractical to make all the employees of ACIPCO respondents and that the twelve (12) employees named as respondents were sufficiently representative of all classes of ACIPCO employees. (App. B, B-3). The court further found that the trustees were entitled to a declaration of their rights as trustees in the particulars prayed for in the bill of complaint and that it was desirable and, in fact, necessary to the proper operation of the plan for the trustees to have suitable rules and regulations for the government of the Board of Trustees. (App. B, B-8). The court specifically decreed that the rules and regulations which had been adopted by the Board of Operatives and Board of Management, and submitted to the court as Exhibit G to the complaint, were reasonable and proper, and approved them. (App. B, B-9).

The decree of the court was not appealed and until the filing of this Rule 60(b) motion in February 1986, there had been no attempt to overturn or set aside the decree in the intervening forty-four (44) years. Although there has never been any racial restriction as to who may serve on the Board of Management or the Board of Directors, under the plan, as established by Mr. Eagan during his lifetime and as it existed in 1942, only white males were eligible to serve on the Board of Operatives. In 1970, however, the United States District Court for the Northern District of Alabama, in *Pettway v. American Cast Iron Pipe Company,* 332 F. Supp. 811 (N.D. Ala. 1970), forever removed this restriction as to eligibility and restructured the Board of Operatives so as not to discriminate against black employees. Petitioners mislead the Court when they state that the 1942 decree and the rules and regulations approved by it "were found to be in violation of the 1964 Civil Rights Act and the United States Constitution." (Petition at 19 and 27). The court in *Pettway* found only that certain provisions of these rules relating to the restriction on membership on the Board of Operatives were unlawful and removed the restrictions. This remedial action of the district court was affirmed by the United States Court of Appeals for the Fifth Circuit. *Pettway v. American Cast Iron Pipe Company,* 494 F.2d 211,

264-267 (5th Cir. 1974). The trial court and the Supreme Court of Alabama in this case recognized this finding of limited invalidity of the rules and regulations and held it had been cured by the action of the federal court. (App. E, E-5). Since removal of the restrictions, black employees have been elected to and served on the Board of Operatives, the Board of Trustees and the Board of Directors of ACIPCO.

The Petitioners' Rule 60(b) motion filed in this case was predicated upon alleged fraud and collusion in obtaining the 1942 judgment. As stated by the Supreme Court of Alabama, the grounds alleged in the motion were:

> (a) the court lacked jurisdiction;
>
> (b) the order promulgates a racially discriminatory scheme of trust management and control;
>
> (c) no guardian ad litem had been appointed to represent the interests of future beneficiaries and minor beneficiaries of the trust;
>
> (d) it purports to adjudicate the rights of parties not before the court;
>
> (e) the decree was entered in violation of the then applicable rules of law; and
>
> (f) the proceedings were devoid of fundamental compliance with the requirements of procedural and substantive due process.

516 So.2d at 552 (App. F, F-58, F-59).

Three exhibits, including the affidavit of one James Whitehead, were attached to Petitioners' Rule 60(b) motion. In their response, the Respondents contested the claims set forth in the Rule 60(b) motion and asserted certain affirmative defenses.

A hearing was held on the Rule 60(b) motion on March 7, 1986. Petitioners offered no evidence of any discrimination against the Petitioners or any black employees of ACIPCO or of any injury to any of them since the 1970 court decree in *Pettway v. American Cast Iron Pipe Company, supra.* Likewise, there was no evidence presented of any fraud. In fact,

there was no live testimony or testimony by way of deposition offered by Petitioners on any subject.

The trial court by order dated May 29, 1986 denied the relief sought by the Petitioners. (App. E, E1-9). In its order, the trial court held, among other things, that the 1942 decree was not void because of racial restrictions originally included in the Eagan plan which had long since been removed and that there was no evidence of fraud sufficient to overturn the 1942 decree. *Id.*

The Petitioners appealed the decision of the trial court to the Supreme Court of Alabama. At that time three other cases on appeal in the Supreme Court of Alabama were consolidated with this case. Two of the other cases were appeals by the Petitioners from denials of their requests for preliminary injunctions. The third case involved a proceeding pursuant to the rules and regulations of the Board of Trustees which had been approved in the 1942 decree. The Supreme Court of Alabama affirmed the judgment of the trial courts in each of these cases. The Supreme Court of Alabama specifically rejected the Petitioners' fraud and other claims. 516 So.2d 551 (App. F, F70-72). The Supreme Court of Alabama also rejected Petitioners' argument that the 1942 judgment was due to be set aside because in 1942 the trust was racially discriminatory. The court agreed with and affirmed the trial court's express finding that these racial restrictions had long since been removed. *Id.*

REASONS FOR DENYING THE WRIT

Petitioners have failed to present any "special and important" reasons for granting the writ. Sup.Ct. Rule 17. This case actually involves only questions of state law and procedure in trust administration. Except for the racial discrimination claim, the grounds set forth by Petitioners in their Rule 60 (b) motion related to matters of purely state law, e.g., lack of jurisdiction by the state court, fraud, and failure to appoint a guardian ad litem. As to the claim that the 1942 judgment promul-

gated racial discrimination, the Supreme Court of Alabama held that any racial infirmity which might have existed in the Eagan plan had been remedied by the federal courts in *Pettway, supra.* This holding is quite correct. The racial aspects of the Eagan trust and plan, of the organization of ACIPCO, and of the provisions of the judgment in *Moore v. Hardin* were all meticulously examined by the United States District Court, and the remedial action ordered by the court was affirmed by the United States Court of Appeals for the Fifth Circuit. The breadth of the district court's consideration is abundantly clear from a reading of its opinion. As stated in its opinion, the district court considered whether to require ACIPCO:

> ". . . to reorganize its managerial and organizational structure under the Will of John J. Eagan without the requirement of segregated boards so that the Negro employees at Acipco will have equal authority with white employees with respect to management control, with all other incidents and benefits now accruing to white employees at Acipco."

332 F. Supp. at 813.

Thus, the issue which Petitioners attempt to raise was decided by the federal courts more than fifteen (15) years ago. The decision of the court below simply does not present any issue of substantial or special importance warranting consideration by this Court.

I. There Is No Conflict Between The Decision Of The Court Below And Any Decision Of This Court.

The decision of the Supreme Court of Alabama is not in conflict with any decisions of this Court. An analysis of the cases cited by Petitioners demonstrates the lack of any conflict.

Teamsters v. United States, 431 U.S. 324 (1977), relied on by Petitioners, was a Title VII case dealing with discrimination in hiring, transfers, promotions and seniority. The decision of the Supreme Court of Alabama in no aspect undertakes to deal with nor does it affect such matters. The *Pettway* litigation, on

the other hand, has comprehensively dealt with each of them. *Pettway v. American Cast Iron Pipe Company,* 576 F.2d 1157 (5th Cir. 1978), *cert. denied,* 439 U.S. 1115 (1979).

Equally misplaced is Petitioners' reliance on *Hunter v. Underwood,* 471 U.S. 222 (1985). In *Hunter,* this Court held that a section of the Alabama Constitution of 1901 which disenfranchised persons convicted of a crime involving moral turpitude violated the equal protection clause of the Fourteenth Amendment as applied to misdemeanants. The decision in *Hunter* bears no resemblance to the present case. In *Hunter,* this Court found the requisite state action and the proof of racially discriminatory intent or purpose necessary to show a violation of the equal protection clause. There is no evidence in the instant case of the state involving itself in any discriminatory act. *Cf. Moose Lodge No. 107 v. Irvis,* 407 U.S. 163 (1972); *Burton v. Wilmington Parking Authority,* 365 U.S. 715 (1961). Moreover, there is nothing whatever to indicate that racial discrimination was a motivating factor or that there was any racially discriminatory intent on anyone's part in obtaining the judgment in *Moore v. Hardin. Cf. Arlington Heights v. Metropolitan Housing Dev. Corp.,* 429 U.S. 252 (1977); *Washington v. Davis,* 426 U.S. 229 (1976).

Petitioners also cite *Bazemore v. Friday,* 478 U.S. ....., 106 S.Ct. 3000 (1986), which dealt primarily with the application of Title VII to employees of the North Carolina Agricultural Extension Service. Petitioners attempt to show that the holding in *Bazemore* that the Extension Service had an obligation to eliminate salary disparities between blacks and whites created prior to the effective date of Title VII has some relevance to this case. In fact, *Bazemore* has nothing to do with the decision of the Supreme Court of Alabama in this case. The matter of the effects of past discrimination in employment at ACIPCO was thoroughly dealt with and rectified in the *Pettway* litigation.

The last decision of this Court cited by Petitioners, *Gilmore v. City of Montgomery,* 417 U.S. 556 (1974), involved questions as to whether the city's permitting certain uses of public

park recreational facilities was violative of the Fourteenth Amendment and prior desegregation orders. The central issues in the case were state action, intention to discriminate, and efforts to circumvent prior desegregation orders. The decision of the Supreme Court of Alabama which Petitioners seek to have reviewed involves none of the same issues. *Gilmore* was a case dealing with desegregation of public schools and other facilities and is totally inapposite to the present case.

The foregoing clearly demonstrates that the decision of the Supreme Court of Alabama is not in conflict with any of the decisions of this Court cited by Petitioners. Moreover, there are no other decisions of this Court with which it conflicts.

Finally, there is no evidence in the record in this case to support Petitioners' allegations that despite careful scrutiny and remedial action by the federal courts, there has been a "locking in" or "freezing" of prior discriminatory practices at ACIPCO. Merely reading the decision of the Supreme Court of Alabama will show that Petitioners have completely mischaracterized its holding. The decision in no way promotes or perpetuates any racial discrimination or vestiges of past racial discrimination.

II. There Is No Important Question Of Federal Law Warranting Consideration By This Court.

This case presents no important question of federal law which has not been, but should be, settled by this Court. In fact, it presents *no* question of federal law at all. Petitioners have simply tried to resurrect in the proceedings in the Alabama state courts a question of federal law relating to racial discrimination which has already been fully resolved in the federal courts. There is nothing to warrant this Court's attention. It is obvious from the petition itself that Petitioners, having lost on the only possible issues involved in the case — all issues of state law — are trying to prolong the litigation by a desperation attempt to convince this Court that some federal issue is involved, when, in fact, there is none.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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